

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GILBERTO LOPEZ,

Plaintiff,

vs.

SSA, ASSISTANT SECRETARY,

Defendants.

No. CV-12-3077-LRS

ORDER OF DISMISSAL

The *pro se* Plaintiff, proceeding *in forma pauperis*, has filed a Complaint against the Defendants with allegations purportedly stemming from plaintiff's denial of his benefits through the DSHS. On June 13, 2012, the Court reviewed the Complaint for legal and factual sufficiency. The Court has determined that the Complaint fails to comply with Federal Rule of Civil Procedure 8(a). For instance, the Complaint requests this Court to provide a "declaration that he is a Citizen of the United States and that he is the person he claims to be in the name of Gilberto Lopez." ECF No. 1, at 6-7. Plaintiff further requests "an award of 78,920, at a minimum for the failure to grant benefits to the Plaintiff." *Id.* at 6.

Plaintiff, a resident of Yakima, Washington, brings this action against the Social Security Administration and Assistant Secretary. By separate Order issued on May 17, 2012, plaintiff has been granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 3). This matter is before the Court for a *sua sponte* review of plaintiff's complaint to determine whether the complaint, or any portion of it, should be dismissed because it is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a

1 defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B).

2 In this case, plaintiff has failed to assert any claim with an arguable basis in
3 fact or law, or alternatively, has failed to state a claim upon which relief may be
4 granted in this federal court. The Social Security Act provides: “The Commissioner
5 of Social Security shall require of applicants for social security account numbers
6 such evidence as may be necessary to establish the age, citizenship, or alien status,
7 and true identity of such applicants, and to determine which (if any) social security
8 account number has previously been assigned to such individual.” 42 U.S.C. §
9 405(c)(2)(B)(ii). The Social Security regulations further provide:

10 An applicant for an original social security number card must submit
11 documentary evidence that the Commissioner of Social Security regards as
12 convincing evidence of age, U.S. citizenship or alien status, and true identity. An
13 applicant for a replacement social security number card must submit convincing
14 documentary evidence of identity and may also be required to submit convincing
15 documentary evidence of age and U.S. citizenship or alien status. An applicant for
16 an original or replacement social security number card is also required to submit
17 evidence to assist us in determining the existence and identity of any previously
18 assigned number(s). A social security number will not be assigned, or an original
19 or replacement card issued, unless all the evidence requirements are met.

20 Plaintiff has not provided a decision of the Social Security Administration.
21 The requirement that plaintiff obtain proper verification of his identity before a
22 Social Security card may be issued, if that is what plaintiff is complaining of, does
23 not deny plaintiff his benefits and his due process guaranteed under the Fifth and
24 Fourteenth Amendments as plaintiff avers. Nor is there any other logical
25 construction of plaintiff's complaint from which the Court can divine a viable claim
26 against the defendants over which the Court might have jurisdiction.

27 When a complaint is dismissed under 28 U.S.C. §1915, the plaintiff should
28 be given leave to amend the complaint with directions as to curing its deficiencies,

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1 unless it is clear from the face of the complaint that the deficiencies could not be
2 cured by amendment. *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir.1987)
3 (dismissal for failure to state a claim). The Court finds that the deficiencies herein
4 cannot be cured by any amendment.

5 Accordingly, the Court concludes that plaintiff's complaint is subject to
6 dismissal as frivolous, or alternatively, on the ground that the complaint fails to
7 state a claim upon which relief may be granted. The complaint is hereby
8 **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B). The Court certifies pursuant
9 to 28 U.S.C. § 1915(a) that for the foregoing reasons an appeal of this Order would
10 not be taken in good faith and therefore denies plaintiff leave to appeal in forma
11 pauperis. Plaintiff, a non-prisoner, remains free to apply to proceed in forma
12 pauperis in the Court of Appeals.

13 **IT IS HEREBY ORDERED:** Plaintiff's action is **DISMISSED** without
14 prejudice.

15 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
16 Order, provide a copy to plaintiff and counsel of record, and **CLOSE THIS FILE.**

17 **DATED** this 14th day of June, 2012.

18 *s/Lonny R. Suko*

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LONNY R. SUKO
20 United States District Judge